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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,202	12/01/2003	Thomas Maierholzner	22751	9821
535	7590	09/07/2006		
THE FIRM OF KARL F ROSS 5676 RIVERDALE AVENUE PO BOX 900 RIVERDALE (BRONX), NY 10471-0900			EXAMINER LARSON, JUSTIN MATTHEW	
			ART UNIT 3727	PAPER NUMBER

DATE MAILED: 09/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/725,202	Applicant(s) MAIERHOLZNER, THOMAS	
	Examiner Justin M. Larson	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/6/04, 6/4/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statements (IDS) submitted on 2/6/04 and 6/4/04 are noted. The submissions are in compliance with the provisions of 37 CFR 1.97 and 1.98. Accordingly, the examiner is considering the information disclosure statements.

Claim Objections

2. Claim 5 is objected to because of the following informalities: It appears as though Applicant meant for the claim to read, "...wherein the recess *is* a depression in the center console". Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4, 5, and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 4 recites the limitation "the depression" in line 2. Claim 5 recites the limitation "the center console" in line 2. Claim 12 recites the limitation "the underside" in line 2. There is insufficient antecedent basis for these limitations in the claims.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-7, 9, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Rusten et al. (US 5,509,633 A).

Regarding claim 1, Rusten et al. disclose a handling device (21) placed on a wall (10) of a vehicle in a removable manner, attached removably by means of a fastener (38/42). Regarding claim 2, the device of Rusten et al. is placed above a recess (12) in the wall. Regarding claim 3, the device of Rusten et al. is held in the wall by means of a snap-together joint (38/42). Regarding claim 4, the device of Rusten et al. comprises tabs (38) on a side (34) facing the depression that interact with recesses (42) at the depression. Regarding claim 5, the recess is a depression in the center console (10) of a motorized vehicle. Note that while Rusten et al. does not specify the location of the console (10), Applicant has not set forth any structure of the center console that would require such specific description from Rusten et al. Regarding claims 6, 7, and 13, the device of Rusten et al. comprises at least one opening (24) for handling with a diameter larger than that of a beverage bottle or beverage can. This opening is also capable of accepting a coin or bottle opener. Regarding claim 9, the device of Rusten et al. comprises a recess (U-shaped recesses shown) of its lateral, external contour, by means of which the device can be grasped.

7. Claims 1, 6, 7, and 10-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Ricchiuti (US 5,054,668 A).

Regarding claim 1, Ricchiuti discloses a handling device (1) placed on a wall (trunk floor) of a vehicle in a removable manner, attached removably by means of a fastener (40). Regarding claims 6, 7, and 13, the device of Ricchiuti comprises at least one opening (24) for handling with a diameter larger than that of a beverage bottle or beverage can. This opening is also capable of accepting a coin or bottle opener. Regarding claim 10, Ricchiuti discloses an ice scraper being held in the handling device (col. 1 lines 38-45). Regarding claim 11, the device of Ricchiuti includes two lips protruding from its lateral, external contour, in particular with a pointed, external edge (see esp. Figure 2). Note that Ricchiuti discloses the device being made of plastic. Regarding claim 12, the device of Ricchiuti has ridges or grooves (corrugation) on the underside near a narrow side of the device. Note that the interior walls can be considered the underside of the device when it is tipped on its side.

8. Claims 1-9, 13, 15, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Droste et al. (US 5,865,411 A).

Regarding claim 1, Droste et al. disclose a handling device (1) placed on a wall (dashboard) of a vehicle in a removable manner, attached removably by means of a fastener (21/30). Regarding claim 2, the device of Droste et al. is placed above a recess (air vent) in the wall. Regarding claim 3, the device of Droste et al. is held in the wall by means of a snap-together joint (20/21). Regarding claim 4, the device of Droste et al. comprises tabs (21) on a side facing the depression that interact with recesses (20) at the depression. Regarding claim 5, the recess is a depression in the center console (dashboard)

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of a motorized vehicle. Regarding claims 6, 7, and 13, the device of Droste et al. comprises at least one opening for handling with a diameter larger than that of a beverage bottle or beverage can. This opening is also capable of accepting a coin or bottle opener. Regarding claim 8, the device of Droste et al. includes a rubber lip (37) around parts of the opening. Regarding claim 9, the device of Droste et al. comprises a recess (near button 28) of its lateral, external contour, by means of which the device can be grasped. Regarding claim 15, the device of Droste et al. consists of two flat elements (34,35) that are joined unseverably via a clip connection (36). Regarding this clip connection being "unseverable", Applicant has disclosed that the insert and the carrier are unseverably connected via clip connections (12) (Page 4 of Spec). Regarding claim 16, the lip (37) of Droste et al. is provided between the flat elements (34,35) and the lip protrudes laterally outwardly.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 6, 7, 13-15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al. (JP 407271316 A) in view of Ricchiuti.

Regarding claim 1, Suzuki et al. disclose a handling device for use in a vehicle but fail to disclose the device being placed on a wall of the vehicle in a

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removable manner by means of a fastener. Ricchiuti, however, teaches that it is old and well known in the art to secure handling devices to a wall in a vehicle using a removable fastener means (40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to attach the handling device of Suzuki et al. to a wall of a vehicle using a removable fastener, as taught by Ricchiuti, so that the device was held in place, less likely to shift while the vehicle was in motion. Regarding claims 6, 7, and 13, the device of Suzuki et al. comprises at least one opening (42) for handling with a diameter larger than that of a beverage bottle or beverage can. This opening is also capable of accepting a coin or bottle opener. Regarding claim 14, the device of Suzuki et al. includes an LED (32). Regarding claim 15, Suzuki et al. fails to disclose the device being made from two flat elements that are joined together as the device casing (41) of Suzuki et al. is shown to be a unitary piece. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the casing of Suzuki et al. out of two separate pieces since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179. Regarding claim 17, Suzuki et al. discloses a capacitor for providing power to the LED. Examiner is of the position that a capacitor is effectively a rechargeable battery since the capacitor itself stores energy to power the LED and can be recharged by a solar cell.

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11. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al. in view of Ricchiuti as applied above in view of Nolan (US 2003/0103345 A1).

To the degree it can be argued that the capacitor of the modified Suzuki et al. device is not actually a battery, Nolan also discloses a casing having external solar cells (80,82) which charge an internal power supply (55) that in turn powers a series of LED's (44). Nolan teaches that the internal power supply is a rechargeable battery. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the capacitor of Suzuki et al. with a rechargeable battery, as taught by Nolan, since both capacitors and rechargeable batteries are rechargeable power supplies.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited art relates to beverage holders, center consoles, and lighted receptacles.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JML
8/30/06


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